

EXHIBIT 12

I R E L L & M A N E L L A L L P

A REGISTERED LIMITED LIABILITY LAW PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

840 NEWPORT CENTER DRIVE, SUITE 400
NEWPORT BEACH, CA 92660-6324
TELEPHONE (949) 760-0991
FACSIMILE (949) 760-5200

1800 AVENUE OF THE STARS, SUITE 900
LOS ANGELES, CALIFORNIA 90067-4276

TELEPHONE (310) 277-1010
FACSIMILE (310) 203-7199
WEBSITE: www.irell.com

WRITER'S DIRECT
TELEPHONE (310) 203-7106
FACSIMILE (310) 556-5206
dgindler@irell.com

October 1, 2004

VIA E-MAIL

Claire Laporte, Esq.
Foley Hoag LLP
155 Seaport Blvd.
Boston, MA 02210-2600

Re: In re Columbia University Patent Litigation, MDL No. 1592

Dear Claire:

I am writing in response to your letter dated September 30, 2004, in which you inquire about the statement in our reply brief that Columbia "will not sue [plaintiffs] for infringement of the '275 patent—as to any product—at any time while the Patent Office is considering the reissue application and the reexamination petition." You have asked two questions on this subject. They are answered below in the same order in which they were posed in your letter.

1. This statement is a binding and irrevocable commitment on behalf of Columbia to refrain from instituting a legal action against any plaintiff for infringement of, or royalties under, the '275 patent as to any activities, whether or not within the scope of the Covenant Not to Sue, until after the issuance of a reissue patent or reexamination certificate.

2. This statement is not intended to modify the scope of the Covenant Not to Sue in any respect, including in the manner described in your second question.

Please let me know if you have any additional questions.

Very truly yours,



David I. Gindler